

HEALTH & SAFETY CODE

CHAPTER 482. SIMULATED CONTROLLED SUBSTANCES

Sec. 482.001. DEFINITIONS. In this chapter:

(1) "Controlled substance" has the meaning assigned by Section 481.002 (Texas Controlled Substances Act).

(2) "Deliver" means to transfer, actually or constructively, from one person to another a simulated controlled substance, regardless of whether there is an agency relationship. The term includes offering to sell a simulated controlled substance.

(3) "Manufacture" means to make a simulated controlled substance and includes the preparation of the substance in dosage form by mixing, compounding, encapsulating, tableting, or any other process.

(4) "Simulated controlled substance" means a substance that is purported to be a controlled substance, but is chemically different from the controlled substance it is purported to be.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 482.002. UNLAWFUL DELIVERY OR MANUFACTURE WITH INTENT TO DELIVER; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly or intentionally manufactures with the intent to deliver or delivers a simulated controlled substance and the person:

(1) expressly represents the substance to be a controlled substance;

(2) represents the substance to be a controlled substance in a manner that would lead a reasonable person to believe that the substance is a controlled substance; or

(3) states to the person receiving or intended to receive the simulated controlled substance that the person may successfully represent the substance to be a controlled substance to a third party.

(b) It is a defense to prosecution under this section that the person manufacturing with the intent to deliver or delivering the simulated controlled substance was:

(1) acting in the discharge of the person's official duties as a peace officer;

(2) manufacturing the substance for or delivering the substance to a licensed medical practitioner for use as a placebo in the course of the practitioner's research or practice; or

(3) a licensed medical practitioner, pharmacist, or other person authorized to dispense or administer a controlled substance, and the person was acting in the legitimate performance of the person's professional duties.

(c) It is not a defense to prosecution under this section that the person manufacturing with the intent to deliver or delivering the simulated controlled substance believed the substance to be a controlled substance.

(d) An offense under this section is a state jail felony. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.03, eff. Sept. 1, 1994.

Sec. 482.003. EVIDENTIARY RULES. (a) In determining whether a person has represented a simulated controlled substance to be a controlled substance in a manner that would lead a reasonable person to believe the substance was a controlled substance, a court may consider, in addition to all other logically relevant factors, whether:

(1) the simulated controlled substance was packaged in a manner normally used for the delivery of a controlled substance;

(2) the delivery or intended delivery included an exchange of or demand for property as consideration for delivery of the substance and the amount of the consideration was substantially in excess of the reasonable value of the simulated controlled substance; and

(3) the physical appearance of the finished product containing the substance was substantially identical to a controlled substance.

(b) Proof of an offer to sell a simulated controlled substance must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 482.004. SUMMARY FORFEITURE. A simulated controlled substance seized as a result of an offense under this chapter is subject to summary forfeiture and to destruction or disposition in

the same manner as is a controlled substance property under Subchapter E, Chapter 481.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 141, Sec. 3, eff. Sept. 1, 1991.

Sec. 482.005. PREPARATORY OFFENSES. Title 4, Penal Code, applies to an offense under this chapter.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 39, eff. Sept. 1, 1995.